DEFINING RIGHTS: CHALLENGE TO URBANISM AND URBAN STUDIES

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Among the recent trends calling for the attention of urban scholars are the rapid urbanization and institutional change in China. In the 1920s, Chicago was the place where European immigrants found their "natural areas" and where urban scholars developed the model of the segregated city which dominated urban studies for decades. Today Chinese cities are the places to study ownership and use rights. Chinese urban scholars after analyzing contemporary urban problems in Chinese cities have reached the conclusion that that property rights are ambiguous in China, and in order to remove corruption and prevent over development is to define property rights and let the market mechanism decide the allocation of land. Why this should interest also urban scholars outside China, is that similar recommendations, policies and trends are also manifest in Western cities. In the United States, cities limit the use rights of citizens. In Helsinki, the new mode of planning - contract planning - makes partners to define development rights. Defining property rights, use rights or development rights, the trend is the same: defining rights. The paper wil discuss the theoretical and ideological background of this trend in urban development, and call for a critical evaluation of it.

Chinese cities

In the 1980s, John Friedmann (Friedmann & Goetz 1982) called for studying the effects of globalization and initiated a project comparing cities around the world. His call ultimately, with the contribution of Saskia Sassen (1991), led to what we now know as the global city paradigm. Recently Friedmann has become interested in Chinese cities. He has written a book on China's urban transition (Friedmann 2005) and presented theses for studying China's urbanization (Friedmann 2006). Urbanization in China, according to Friedmann, has become a hot topic. Western social scientists have rushed into study a myriad of subjects in Chinese cities. Friedmann sees what is happening in today's China as unique and suggests undertaking comparative research that looks at Russia, Japan, the Republic of Korea, Indonesia, India or Brazil in order to better understand the specific differences in a Chinese form of modernity.

John Friedmann is not the only one who has became fascinated at the transformations in China. Recent volumes of urban studies journals like *International Journal of Urban and Regional Research* and *Urban Studies* have been filled with articles concerning China. The reason for such an enthusiasm over Chinese cities cannot be that the readers are interested in Chinese cities as such, but there must be something also Western scholars can learn after analyzing cities in China.

For me there have been two reasons. The first is the rapid and massive urbanization and the rise of mega cities at an accelerated speed. The development that in Europe took centuries is in China squeezed into few decades. Cities like Schenzen grew just in twenty years from a small settlement into a city of millions. The development in China also has some unique characteristics, like floating population, work unit developers and strange looking mega cities, which make it an interesting comparison with the European and American urbanization. The city center of the largest city in the world, Chonqing, is a strange mixture of glass skyscrapers and muddy streets with ducks and chickens. The second, and for me even more exciting, reason is the institutional change going on in China, from the socialist society to a more market oriented society, and especially the introduction of new institutions concerning land management and the allocation of land.

Ambiguous property rights

One of Friedmann's thesis is that China's hyperurbanization is recent, began only a short while ago, nevertheless Chinese cities are of ancient origin. He suggests taking the past into account when analyzing the present urbanization.

As to the land ownership and management, the legacy in China is especially intriguing. In ancient China, the free hold and leasehold systems coexisted. Some Dynasties carried out land reforms introducing the public landownership system, whereas during some other times state lands returned to private hands and tended to concentrate in the hands of wealthy individuals (Li 1999). Sun Yat-sen introduced the Georgist land reform to the Republic of China, and Mao, following the Marxist line of land reform, nationalized the land. At the local level, land was used and managed by work units.

In the end of 1980s a significant change was made in China's socialist land ownership and land use system. This was the separation between ownership and use rights. The article 10 in the 1988 amended Constitution states: "No organization or individual may appropriate, buy, sell, or lease land, or otherwise engage in the transfers of land by unlawful means". The Land Administrative Law of the People's Republic of China, adopted in 1986, amended in 1988 and revised in 1998, states that land is used in accordance with the constitution and maintaining *the socialist public ownership of land* (1§). The socialist public ownership of land means ownership by the people and collective ownership by the working people. The right to the use of land may be *transferred* according to law. (2§.) This attempt to combine the socialist public ownership of land and the transfer of the use rights makes the Chinese case unique in the history of land ownership and management. Like Singapore and Hong Kong are cities to analyze the type of land market and allocation system that best suit to the capitalist system (Haila 2000), Chinese cities can help us understand how to combine collective ownership and private use of land.

Chinese urban scholars have analyzed the selling and buying of land use rights and the emerging urban problems like overdevelopment, corruption, high vacancy rate and displacement of people. Rather unanimously they have reached the conclusion that the reason for urban problems in Chinese cities are ambiguous property rights, and that the remedy is the definition of property rights. They recommend the market mechanism, and see hardly any advantage in the administrative allocation.

The questions the analysis of Chinese cities provoke us to rethink are the questions concerning ownership and use rights. Are the ownership rights settled and interests vested in Western cities? Are the ownership and use rights in Western cities defined well enough to let the market allocate the land use? Are there attempts to define rights in Western cities? In the following I will list some examples of new claims and definitions, and discuss the implications of these to urban studies at the end of the paper. These examples concern rights activism, limiting use rights in cities, the use of eminent domain and development rights.

Claiming rights

The questions of ownership and rights look to be settled in the West. John Locke in the 17th century made up a story that legitimated the private ownership. Enclosures more or less finished the commons and possibility of claiming new lands. European cities as significant landowners have a tradition of using public lands for the common good of citizens.

Nevertheless, in recent years there have been challenges to the established ownership and vested rights. *Indigenous people* have claimed their rights to land and artefacts. In Finland, the Lapps have claimed the ownership and use rights to lands owned by the state of Finland and managed by the National Board of Forestry. The Lapps argue that they need these lands in order to fish, hunt and continue reindeer husbandry, their original source of living. ILO has ratified a treaty that grants landownership rights to indigenous people. Finland has not been able to ratify this treaty because of the conflict with the Lapps. The District Court of Lappish People has dissociated itself from the study by the Finnish State which tries to find out original landownership titles in Lapland.

Environmental movement has launched several debates concerning rights. In the market in tradable emissions rights to pollute are sold. Rather paradoxically such markets, although as a kind of achievement of the environment movement, legitimate pollution, if you only pay for it. The idea of sustainable development implies a concern for the rights of the future generations.

Human rights are defended and regarded as universal rights by organizations like Amnesty International. *Intellectual property rights* have become an issue in countries where pirate products are sold and in science parks where universities, firms and academics attempt to produce marketable commodities out of scientific innovations.

Such various rights claims do not only tell about an increased ethical concern in our society, but are related to the type of policy that seems to be popular around the world. David Harvey (2005, 176-178) sees the individual rights activism as a natural consequence of the neoliberal insistence upon the individual. Neoliberalism entails the loss of rights and fragments, and hence creates a universalistic rhetoric of human rights, of sustainable ecological practices, and of environmental rights as the basis for unified oppositional politics.

Use rights in cities

In several Western countries since the 1990s the laws regulating town planning and urban development have been amended in the way to increase the participation of citizens. Already before the enacting of such laws citizens became more active and protested against, for example, gentrification and development projects. Contests over development and gentrification show what Nicholas Blomley (2004) has called localized property claims and community claims which are not claim rights of alienation, but rights of use and access.

Building gated communities has been popular in recent years. Gated communities exclude and deny the rights of outsiders, but also limit the rights of those included. For example, homeowners' associations (which can be compulsory in gated communities) can control the façade of houses. Gated communities have also launched law cases concerned the rights of those included. In Malaysia, for example, there has been a court case in which a resident who was robbed sued the developer who had advertised the gated community as the safe neighbourhood.

In cities squatters have for long denied existing property rights by occupying buildings. New claims put forward by skaters and participants in street parties do not make claims to ownership like squatters, but claim use rights.

In the 1980s and 1990s, writes Don Mitchell (1997), several anti-homeless laws were passed in the United States. The purpose of these laws is to cleanse the streets of those left behind by globalization by simply erasing the spaces in which they must live: in Santa Cruz, Phoenix and St. Petersburg it is illegal to sleep in public; in Atlanta and Jacksonville it is a crime to cut across or loiter in a parking a lot; in New York it is illegal to sleep in or near subway, or to wash car windows on the streets. Such laws, the annihilation of space by law, according to Mitchell, create a world in which a whole class of people simply cannot be because they have no place to be. "Landed property thus again becomes a prerequisite of effective citizenship" (ibid., 321). Neil Smith (1996) paying attention to the class nature of such urban policy has called it the revanchist city.

In 1998, the City of Helsinki started a policy called “Stop töhryille” (Stop smudging). The policy was inspired by New York’s Broken Window policy attempting to fix a broken window immediately after broken and catching the offender. In Helsinki the policy managed to decrease the amount of graffiti. In 2006, the City of Helsinki started a policy to clean public transportation by removing from trains, subways and buses people because of drunkenness, smoking, travelling without tickets or causing any disturbances.

In an office neighbourhood of Helsinki, Pasila, where skateboarding used to be a popular hobby, flowerpots appeared in the curbs preventing skating. Skaters who lost their skateboarding curbs regret this and say that their skating did not disturb anyone because the area is an office area and they used it only after office hours. (Lovio, Suksi & Toivonen 2006.)

Public lands

What used to be the public ownership and public land, and especially public property used for the common good of citizens have changed thoroughly. One important change concerns the nature and policy of actors, those of the state and the city.

The state of Finland has established three real estate companies to own and manage its real estate assets. All these companies have been established since the 1990s. The company Engel takes care of developing government buildings and real estate services. The company Kapiteeli is the state’s real estate investment company that manages the state property the state does not need for governmental activities. The company Senate Properties manages the state properties the state needs for its own use. In addition to these, there is Sponda, a listed real estate company, the original portfolio of which was the properties the state confiscated during the recession in the 1990s. All the state real estate companies have adopted very entrepreneurial strategies and seek to make the best and most efficient use of the state real estate. Because of such entrepreneurial strategies they have been driven into conflicts with their tenants like universities, prisons and district courts. Maximizing rental income differs from the policy of using public lands for public good and common interest.

The City of Helsinki that owns more than 60% of the land in Helsinki has established the Real Estate Center which rents space owned by the City for various departments of the city, like

schools, health care and libraries. The tenants complain that the rents have increased more than they have given for rents in their budgets. Also in the case of the city, like in the case of the state, public ownership does not necessarily imply public interest. The consequence is that there is less money for activities, like paying for teachers and buying books.

Unusual cases of using eminent domain and making land deals blur even more the roles of public actors. The City of Järvenpää in Finland has applied a permission from the Ministry of Environment to expropriate land owned by the state. The state, represented by the Senate Properties, the state real estate company, is not willing to alienate its properties to the City. The Senate Properties prefers to make a land use contract, because through that method it could get price of a developed land. In its statement for the Ministry of Environment the Senate Properties regrets the "loose" willingness of the City to negotiate. The City, in its part, argues that the state should bear its responsibility for the housing in the Helsinki Metropolitan Area (in which Järvenpää is located and has pressures to develop housing for people moving to Järvenpää). (Helsingin Sanomat 8.10.2006.)

The City of Helsinki has asked the help of the state to compulsory annex and expropriate lands from the neighbouring rural municipality of Sipoo. With these new lands Helsinki wish to solve its land shortage problem and make its tax base healthier. The municipality of Sipoo is opposing the annexation and appropriation of its landed areas.

The city of Hämeenlinna in Finland has bought land from a golf club in order to prevent the golf club from developing its lands for summer cottages. The area the city bought is designated as a landscape with national value and beauty. There have been already attempts previously to develop the area, but they have been prevented by planning authorities. Now the city used other measures and bought the land. The price the city paid was that of a developed land, not of a raw land. One city councillor, who opposed the deal, argues that the city is buying completely illusory development rights. The city government, however, was unanimous in its recommendation to purchase the land. It defended the deal by arguing that it is an efficient method to prevent the land from being developed. The head of the planning office remarks that such a deal is not a new thing, "the city has also previously bought development rights that were difficult to implement because of the common interest" (HS 13.11.2006).

Development rights

In Finland the definition of development rights used to be the monopoly of municipalities, called “the planning monopoly”. Unlike in cities in which developers can make planning applications, the right to zone, plan and determine the plot ratio used to be the sole responsibility of planning authorities. In the 1990s, a coffee factory, Paulig, in a suburb of Helsinki, Vuosaari, was a pioneer to break this old principle of the planning monopoly. Paulig was given a right to plan and develop housing and offices. Since then it has become increasingly unclear who owns and can legitimately define development rights.

In Helsinki the head of the city planning office has suggested to give housing estates extra development rights in order for them to renovate their premises. The City of Helsinki has also increasingly sold development rights to owners who wish to increase the plot ratio of their properties.

In Italy, some cities have moved even further from the use of authoritative tools towards market-based tools and introduced a new institution of a development rights market making possible for the property owners to negotiate the transfer of the development rights they own (see Micelli 2002).

The project Kamppi, completed in June 2006, in the city center of Helsinki was the largest development project in Finland. It consists of underground bus terminal, offices, shopping facilities, restaurants, pedestrian areas and housing. It is a public-private partnership between the City of Helsinki and SRV Viitoset, a Finnish construction and development company. One aspect of such partnership projects, unfortunately often neglected, is that they require several contracts that need to be as detailed as possible. And in order to make such detailed contracts the partners need to define as detailed as possible what they own. One problem with such definitions is that they easily forget the outsiders, non-owners, and their use rights. The recent trend in town planning and urban development, from regulation towards contract planning, thus implies a definition of rights, not only development rights but also use rights.

These examples show that ownership and use rights are under redefinition. They are not established nor settled. The question this raises is whether such redefinitions and new claims are accepted or contested, or whether they are at least noticed.

Enjoying possessions and rights depend on the agreement of others. Property relations are social arrangements. Even more, they are not, according to Daniel Bromley (1998), dyadic relationship between the individual and government, but triadic relationship between the owner, government and the others. Rights need recognition by others.

One way of persuading others and get them to recognize our property rights is to tell a story. Locke's narrative of mixing land and labour created an influential myth to legitimate the origin of private property. Years later Rousseau commented Locke's narrative when he wrote: "The true founder of civil society was the first man who, having enclosed a piece of land, thought of saying, "This is mine", and came across people simple enough to believe him." Is Locke's story still powerful of responding to the challenge of new claims to ownership and use rights?

There has emerged a new story, the influence of which has not yet perhaps been fully understood. This is a story told by a Nobel laureate Ronald Coase . Ronald Coase who received the Nobel Prize in 1991 is known for the Coase Theorem formulated as the text book version by another Nobel Prize economist George Stigler. The theorem states that "if costless negotiation is possible, rights are well-specified, and redistribution does not affect marginal values, then the allocation of resources will be identical, whatever the allocation of legal rights and the allocation will be efficient, so there is no problem of externality. Furthermore, if tax is imposed in such a situation, efficiency will be lost" (Layard and Walters 1978, 192). This theorem questions government intervention and says that the efficiency is reached if we let the individual partners negotiate freely. The initial entitlement of rights does not matter, the only thing the government can do is to assign initial rights to those parties that are most willing to negotiate. "It is obviously desirable that rights should be assigned to those who can use them most productively and with incentives that lead them to do so" (Coase 1991, 11). The theorem although abstract and based on unrealistic assumptions has been very influential. Chinese scholars are explicitly basing their recommendations to define property rights and let the

market decide on the ideas of Coase. Also in the West, the redefinitions of property and use rights become more understandable if we read the texts of Coase.

Cities as models

Cities have been models in building new cities, like St.Petersburg was the model in building Helsinki. The best practices are modern versions of looking an advice from other cities. In urban studies, cities have been used as models for understanding other cities. In this urban studies differ from social sciences in general: urban studies require some reference to real cities. In the 1920s, Chicago was the city where European immigrants found their "natural area", and Chicago offered the model of the segregated city for urban studies for decades. Cities around the world have their first Chicago urban sociologists. The Finnish one was Heikki Waris who in his doctorate thesis in the 1930s characterized the emerging working class neighbourhood Kallio in the 19th century Helsinki with its social problems like prostitution, illegal trade of spirits, and poverty as *a natural area*.

Recent years have seen strange battles concerning the status of models or "pradigmatic" cities. Urban scholars in Los Angeles have seen Los Angeles as a model of fragmented postindustrial city and the Los Angeles school as the successor of the Chicago school. The new Chicago school has attempted to get the rule back to Chicago. Europeans have followed the battle aside, and developed a new approach of the European City (Bagnasco & Le Galès 2000; Le Galès 2002; Häussermann & Haila 2005; Kazepov 2005).

Using cities as models and doing comparisons have been popular methods in urban studies. John Friedmann suggested comparing Chinese cities with other cities. Neil Brenner (2003) has identified three uses of superlatives, or three types of doing comparisons, in contemporary urban studies. First, a city is regarded stereotypical (generic) if it claimed that "every single American city that is growing is growing in the fashion of Los Angeles" (Garreau 1991). Second, a city is regarded archetypical (unique) if it is claimed that Los Angeles is "one of the most dramatic and concentrated expressions of the perplexing theoretical abd practical urban issues that have arisen at the end of the twentieth century" (Scott & Soja 1996). Third, a city is regarded prototypical (the first) if it is claimed that Los Angeles is "a prototype of our urban future" (Dear 2002).

My starting point in this paper was Chinese cities with their hyperurbanization and institutional change. With reference to Chinese cities I do not claim that they are stereotypical, archetypical nor protypical, rather Chinese cities in comparison with Western cities provoke us to rethink the questions of rights and ownership which we thought were settled. Chinese cities make us notice that they are far from settled and even more that they can be resettled and redefined. Why Chinese cities are needed to provoke such questions in the West is because established forms of ownership and vested interests have prevented us from seeing that property relations and claims to urban land are heterogeneous, diverse, overlapping, changing all the time and demand continuous persuasion and legitimating, as emphasized by Blomley (2004). In European cities property rights were settled long time ago. This created an illusion that they do not need further persuasion and legitimating. Therefore the limitations of use rights and the contract model requiring more strict definition of use rights have left unnoticed. They, however, further spread and naturalize the private ownership model as the only possible model, affect the behaviour of people and have moral consequences, on what people regard right and wrong. One problem with the ownership model, however, is that it excludes non-owners.

Challenge to urban studies

If rights and the question of ownership is a topic of the day, how urban studies have analyzed these issues. Several urban scholars have discussed or touched the issue of rights. Henri Lefebvre (1968) raised the question of the right to the city with which he meant citizens' right to urban life, places to meet and use values in cities. Several modern debates, like gated communities excluding others and shopping malls decreasing public space have touched upon the issue of rights. Scholars like Don Mitchell and Neil Smith have analyzed the rights in the city.

It is the challenge to urban studies to bring together these debates and to understand and explain the current trend of defining rights; like in the 1980s the challenge was to explain the end of modernism and in the 1990s to analyze the effects of globalization. I will finish this paper by briefly referring to some contributions to the analysis of rights.

David Harvey has analyzed the tendency to redefine rights in the context of economic

development. According to Harvey (2003 & 2005) characteristic to our present neoliberal age is redistribution, not economic growth or generation of wealth. He has introduced a concept of *accumulation by dispossession* to describe this. Harvey refers to primitive forms of accumulation related to the commodification and privatization of land. Accumulation by dispossession transforms common, collective, state and indigenous forms of property rights into exclusive property rights. Examples Harvey mentions are the privatization of social housing in Britain, the privatization of ejido lands in Mexico and the use of eminent domain in the United States to displace low income property owners to free land for upper-income developments to enhance the tax base (Harvey 2005, 164).

Warwick Fox (2000a) has initiated a new field of enquiry, the Ethics and the Built Environment. The ethical issues he lists related to the built environment concern employment, social equity, accessibility of the site by various means, accessibility to the building, public participation in its design and ecological sustainability (Fox 2000b, 210). Among the contributions in this new field of enquiry is Nigel Taylor's (2000) virtue ethical suggestion that those charged with responsibility for the built environment, like planners and designers, should cultivate the personal quality of character of careful aesthetic attention. Fox (2002b) suggests a principle ethics approach. The fundamental principle he suggests is the principle of responsive cohesion, which means responsiveness with ecological, social and built environment and taking into account freedom of others (cohesion).

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